

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

EVELYN BURKE,	:	CIVIL ACTION NO. 1:06-CV-0573
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
ALBERTO GONZALES, et al.,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 21st day of December, 2006, upon consideration of the report of the magistrate judge (Doc. 29), to which no objections were filed, recommending that the motion to dismiss (Doc. 21), filed by defendants Alberto Gonzales and the Bureau of Immigration and Customs Enforcement, be granted, and, following an independent review of the record, it is hereby ORDERED that:

1. The report and recommendation of the magistrate judge (Doc. 29) is ADOPTED.
2. The motion to dismiss (Doc. 21) is GRANTED as follows:
 - a. Plaintiff's claims under Bivens¹ and the Federal Tort Claims Act against defendants Alberto Gonzalez and the Bureau of Immigration and Customs Enforcement are DISMISSED.
 - b. The United States is SUBSTITUTED as the proper defendant with respect to plaintiff's claim under the Federal Tort Claims Act.
 - c. Plaintiff's claim under the Federal Tort Claims Act against the United States is DISMISSED without prejudice for lack of jurisdiction.

¹ Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).

3. The above-captioned case is REMANDED to the magistrate judge for further proceedings on plaintiff's remaining claims against defendant Thomas Hogan, Warden of York County Prison, pursuant to 42 U.S.C. § 1983.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge